IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4236 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JYOTIBEN W/OF NAILESHBHAI KANAIYALAL - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MS SUBHADRA G PATEL for Petitioner(s) : 1,
Mr LR Pujari, AGP for Respondent(s) : 1,
RULE NOT RECD BACK for Respondent(s) : 2,
RULE SERVED for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 12/12/2007

ORAL JUDGMENT

1. By way of this petition, the petitioner- lady

detenu, has challenged the order dated 1.2.2007 passed by the Commissioner of Police, Ahmedabad City, in exercise of powers under section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, 'the Act') declaring the petitioner to be a “bootlegger” within the meaning of the PASA Act. In pursuance of the said impugned order the petitioner is detained in jail since 1.2.2007.

2. From the grounds of detention, it appears that there are five offences – CR. I. No. 5286, 5331, 5381, 5399 of 2006 and CR.I.No. 5035 of 2007 registered against the petitioner under sections 66 (b), 65(e) etc. under the Bombay Prohibition Act wherein quantity of 5 litres, 3 litres, 20 litres, 35 litres and 7 litres respectively of country liquor was found from her possession. On the basis of registration of these cases, the detaining authority held that the present lady detenu, was carrying activities of selling country liquor which is harmful to the health of the public. It is held by the detaining authority that as she is indulged in illegal activities, it is required to restrain her from carrying out further illegal activities i.e. selling of country liquor. This court has also passed order on 19.10.2007 which is as under:

> “Learned counsel for the petitioner, Ms. Patel, submitted that the petitioner, a lady, was branded as a bootlegger and detained since 1.2.2007 by the order impugned herein. She submitted tht the petitiooner had three very young children, one of whom was only 18 months old. Under the circumstances, appropriate authority could have exercised its power under section 15 of the Prevention of Anti Social Activities Act, 1985 on humanitarian grounds. Learned AGP submitted that, without prejudice to the rights and contentions of the parties, case of the petitioner shall be considered by the competent authority, on the basis of this order to examine whether, under the extraordinary circumstances of the family of the petitioner, powers could be exercised in favour of the petitioner, and such decision shall be taken within a period of 15 days.”

3. By passing the above order, this court has also directed the competent authority to consider the case of the petitioner-detenu as she has three minor children and the youngest of them is only 18 months old. On humanitarian ground, in pursuance of the order passed by this court, frequently she was released by the detaining authority on temporary bail and from time to time bail was extended. Her representation was also not considered and was rejected by the detaining authority.

Except the aforesaid cases under the provisions of Prohibition Act, no other offence was registered against the present petitioner-detenu. In the opinion of this court, her activities are, by no stretch of reasoning, said to be disturbing the public order or even the public health suffers and such a subjective satisfaction is reached by the detaining authority. It is seen from the grounds that a general statement that has been made by the detaining authority that consuming liquor is injurious to health and except that, nothing is there on record showing that the activities of the petitioner are affecting the public order. In fact, a perusal of the order passed by the detaining authority shows that the grounds which are mentioned in the order are in reference to the situation of 'law and order' and not 'public order'. Therefore, on this ground, the subjective satisfaction of the detaining authority is vitiated on account of non-application of mind the impugned order deserves to be quashed and set aside.

4. In the case of A***shokbhai Jivraj @ Jivabhai Solanki v. Police Commissioner, Surat (2000(1) GLH 393,*** having considered the decision of the Hon'ble Apex Court in the case of *Ram Manohar Lohia v. State of Bihar* (AIR 1966 SC 740), this court held that the cases, wherein the

detention order passed on the basis of the statements of the witnesses falls under the maintenance of “law and order” and not public order”.

5. In the result, this Special Civil Application is allowed. The order of detention dated 1.2.2007 passed by the Police Commissioner, Ahmedabad, is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

[M.D. SHAH, J.]

msp